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July 12, 2005

## **BY HAND DELIVERY**

Mr. W. Timothy Lough, Ph.D., P.E.  
Special Projects Engineer  
State Corporation Commission  
Division of Energy Regulation  
Post Office Box 1197  
Richmond, Virginia 23218-1197

Re: Scenic Loudoun Legal Defense, Inc. ("SLLD")  
Response to Correspondence Dated June 22, 2005

Dear Mr. Lough:

This is in response to your correspondence to me dated June 22, 2005 concerning 2005 General Assembly legislation (SB-783) 'to analyze the implications of a requirement that [the Commission] consider imposing a condition, when requested by certain localities, that proposed electrical transmission lines be installed underground.' You requested in your correspondence responses to five questions. These responses are provided on behalf of Scenic Loudoun Legal Defense, Inc. ("SLLD"), a party respondent in the pending Commission Case Number PUE-2005-00018 (Application of Virginia Electric and Power Company For Approval and Certification of Electric Transmission Facilities Under Va. Code § 56-46.1 and the Utility Facilities Act (Virginia Code § 56-265.1, et seq.).

Generally, it is the position of SLLD that localities desiring to affect Commission decision-making should participate as a formal party to the proceeding. The Commission, as a powerful and important agency of state government having a unique blend of legislative/administrative/judicial responsibilities and authorities, has developed procedures over time. It is not unusual for government entities to participate. If a locality wishes to participate in any case before any court of record, including the Commission, it should be required to publicly participate as any other party. To not require such participation would create an atmosphere of ex parte and extrajudicial communication.

1. Should a locality requesting the SCC's consideration of an underground transmission line alternative be required to participate as a formal party to the proceeding in which it proposes such an alternative, i.e., should it be required to be a Respondent pursuant to Rule 80 of the Commission's Rules (5 VAC-20-80)?

ANSWER: Yes. See general response.

2. Should any locality requesting the SCC's consideration of an underground transmission line alternative be obligated to develop and submit to the SCC a proposal detailing that alternative, providing evidentiary support for that proposal, and having the burden of proof therefore?

ANSWER: No. Any party, including a locality and any other party, may in its discretion develop and submit evidence concerning proposals. The Applicant has the burden of proof. For example, a respondent's participation may be limited to establish defects in positions of other parties without assuming any burden of proof to establish any fact by virtue of participating as a party respondent.

3. Should a locality requesting the SCC's consideration of an underground transmission line alternative be obligated to propose such an alternative not later than a date corresponding to a specific procedural milestone established in the docket's scheduling order?

ANSWER: No, with qualification. See general response and response to number 2 above. It is the position of SLLD that a locality or other political subdivision of the Commonwealth should be required to participate as a party respondent subject to the same rules of any other party through an SCC proceeding.

4. Should the applicant utility, itself, have the obligation to develop an underground transmission line alternative if such an alternative's consideration by the SCC is requested by a locality? If so, what should be the locality's role in that alternative's development, if any? Additionally, should the cost of such an alternative's development be born entirely by the applicant utility?

ANSWER: Yes, with qualification. The Applicant utility should develop the underground alternative if the General Assembly requires as part of legislation that the applicant utility has the obligation to develop an underground transmission line alternative, such as the obligation imposed by statute upon an applicant to prove that existing rights of way cannot be used. It should not be a requirement that the applicant utility undertake to develop alternative proposals not required by law. Correspondingly, the cost of development of such alternative proposal should not be borne by the utility unless required by law.

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5. Are there any additional procedural or evidentiary issues that the Commission should consider as part of this study?

ANSWER: Yes, we generally request that the Commission not advocate creation of a "special" class to participate in power line cases reserved for localities. Other states are conducting investigations similar to Virginia with respect to locating power transmission lines underground.

For example, the State of Connecticut conducted a series of hearings and studies prior to incorporating criteria for locating power transmission lines underground. *See* Substitute House Bill No. 5418; Public Act No. 04-246; AN ACT CONCERNING ELECTRIC TRANSMISSION LINE SITING CRITERIA (Approved June 3, 2004). We suggest that the Commission review this and similar legislation from other states as a part of this study.

We also suggest further study as to whether an applicant should be required to provide life-cycle cost studies comparing overhead alternatives with underground alternatives.

Thank you for this opportunity to participate in this important matter. Should there be any questions concerning our responses, please do not hesitate to contact me. We look forward to hearing more about this study.

Truly yours,

Charles W. Hundley

CWH/dm

cc: Scenic Loudoun Legal Defense, Inc.